



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: LVO - 176231

PRELIMINARY RECITALS

Pursuant to a petition filed on August 18, 2016, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Milwaukee Early Care Administration - MECA regarding Child Care (CC), a hearing was held on September 14, 2016, by telephone.

The issue for determination is whether the agency properly issued a levy in the amount of \$3,052.05 against the Petitioner related to an overpayment of child care benefits for the period of June 15, 2003 – August 31, 2003.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, WI 53703

By: [REDACTED]
Milwaukee Early Care Administration - MECA
Department of Children and Families
1220 W. Vliet St 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. Child Care (CC) benefits totaling at least \$3,138.10 were paid out on the petitioner's behalf from June 1, 2003 – August 31, 2003.
3. On November 10, 2003 the agency issued a manual Child Care Overpayment Notification to the petitioner (claim number [REDACTED]), seeking recovery of \$3,138.10. That notification advised the petitioner that she could appeal the overpayment determination within 45 days of the date of the notification. On November 11, 2003, the agency issued a computer-generated Child Care Overpayment Notification which referenced the same claim number and the same overpayment amount. The computer-generated notice again advised the petitioner that she could request an appeal within 45 days of the date of the notice.
4. Both the manual and computer generated Child Care Overpayment Notifications were mailed to [REDACTED], the address of a residence where the petitioner lived for approximately two months in 2003. On an unspecified date in 2003, the petitioner relocated from Wisconsin to California. She did not provide the agency with her updated address when she relocated and did not receive the overpayment notifications. The notifications were not returned to the agency as undeliverable.
5. The agency sent the petitioner Repayment Agreements that referenced the overpayment claim identified in the previously issued Child Care Overpayment Notifications on both December 2, 2003 and January 5, 2004. On February 3, 2004, March 3, 2004, and April 2, 2004, the agency sent dunning notices to the petitioner again referencing the previously identified overpayment claim. The Repayment Agreements and dunning notices were all mailed to [REDACTED]. The petitioner did not receive any of them. None of this correspondence was returned to the agency as undeliverable.
6. In December of 2015, the petitioner relocated to Wisconsin. On July 31, 2016, the Public Assistance Collection Unit (PACU) of the agency mailed a notice to the petitioner notifying her that it intended to impose a levy in the amount of \$3,052.05 on her property to recover the delinquent child care overpayments and collection costs. The notice was mailed to [REDACTED].
7. The petitioner filed a timely appeal of the levy notice on August 18, 2016.

DISCUSSION

When the department determines that an individual has been overpaid certain types of public assistance including but not limited to W-2 child care benefits, the department may recover the overpayment and may use more than one method of collection at the same time to do so. See Wis. Stat. § 49.195(3); Wis. Admin. Code §DCF 101.23(4). The relevant statutes explicitly permit the use of a levy against the property of a debtor as one permissible means of collecting overpaid benefits but require that debtors be afforded the opportunity to appeal the levy proceeding. See Wis. Stat. §49.195(3n)(b) and (s). However, the statute expressly limits such appeals “to questions of prior payment of that debt . . . and mistaken identity of the debtor.” Wis. Stat. §49.195(s) and Wis. Admin. Code §DCF 101.23(10)(e). Because the petitioner presented no issue of mistaken identity and did not contest either the amount of the overpayment or of the intended levy, I must find that the department's issuance of a levy was proper.

One of the petitioner's primary assertions during the hearing was that she never received the overpayment related correspondence that was mailed to [REDACTED]. According to Wis. Admin. Code §DCF 101.23(2)(b), when issuing a notice of overpayment,

[t]he county, tribal governing body, W-2 agency, or department shall send notice of the overpayment at the address of a debtor as it appears on the records of the department. Documentation that a county, tribal governing body, W-2 agency, or the department properly mailed the notice to the address of the debtor as it appears on the records of the department and that it was not returned as undeliverable shall be prima facie evidence that notice was delivered and received.

The agency worker credibly testified that the agency mailed the overpayment notifications to the petitioner's last known address and did not receive the overpayment notifications returned as "undeliverable" from the postal service. While such evidence generally would be sufficient to establish that an overpayment notification was both delivered by the agency and received by the petitioner/debtor, in this case the petitioner's credible testimony that she moved out of state in 2003 and that she did not receive the overpayment notifications mailed in 2003 and 2004 effectively rebutted that evidence. Because the petitioner did not receive actual notice of the overpayment until she received the notice of levy, she did not have a prior opportunity to appeal that overpayment. The petitioner is entitled to be heard on the question of whether the department properly assessed an overpayment for child care subsidy payments made from June 1, 2003 – August 31, 2003. A separate file will thus be established and a separate hearing will be scheduled regarding that issue.

CONCLUSIONS OF LAW

The department properly issued a levy against the Petitioner related to an overpayment of child care benefits for the period of June 1- August 31, 2003.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

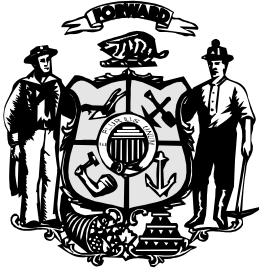
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, **and** on those identified in this

decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 22nd day of September, 2016

\s _____
Teresa A. Perez
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 22, 2016.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit